

EXHIBIT B
SAMPLE MATERIAL TRANSFER AGREEMENT

THIS AGREEMENT is entered into on the date last signed below between [], having an office at [] ("RECIPIENT"), and [], having an office at [] ("["]").

- The “preamble” establishes who the parties to the agreement are and when the agreement takes effect.

1. Material to be Transferred. [] owns, controls, or otherwise has rights in [] ("MATERIAL"). Upon entry of this Agreement, the parties will make arrangements for delivery of one or more samples of MATERIAL from [] to RECIPIENT.

- This section makes clear which party is the owner of the material and sets for what the material is and which party is the recipient to the transfer.

2. Purpose of Transfer. The MATERIAL will be used solely for experiments by RECIPIENT in considering a possible future agreement with [], and will not be sold or used for commercial or production purposes or supplied to any other investigators. RECIPIENT shall not reverse-engineer the MATERIAL. Information associated with MATERIAL and made available to RECIPIENT under this Agreement, whether directly or indirectly by [], shall not be disclosed to others and shall be used by RECIPIENT only for the purposes allowed under this Agreement. RECIPIENT shall take all reasonable precautions to prevent any duplication, disclosure, or use of the associated information for any other purposes.

- The “Purpose” section outlines the allowed uses of the material being transferred. It clearly establishes that the material is to be used only by recipient. Importantly, this section sets out the limitations for how the material is to be used and the purpose of the usage. This section also includes a confidentiality agreement whereby the recipient of the material is not allowed to disclose any information regarding the material to others.
- If one party is the only party to reasonably be expected to not disclose confidential information under the agreement, the other party may push for a unilateral agreement, rather than a mutual agreement.

3. No License Granted. RECIPIENT understands that the supply of the MATERIAL shall not be construed as granting any license, grant or right under any of []' patents or other rights other than to carry out the experiments proposed herein.

- This section establishes that this is not a licensor/licensee relationship. The sole purpose of the relationship between the two parties is to carry out experiments with the material.

4. Exceptions. RECIPIENT shall not be subject to the obligations set forth above as to the disclosure or use of any materials which: (1) are or later become publicly known under circumstances involving no breach of this Agreement by RECIPIENT; (2) are already known to RECIPIENT at the time of receipt of the information; (3) are lawfully made available to RECIPIENT by a third party; or (4) are independently developed by an employee of RECIPIENT

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who has not been privy to the material provided by [].

- This section provides the recipient with protection from liability under certain circumstances.

5. Return of Material. RECIPIENT will return all unused MATERIAL at []' request.

- The purpose of this section is to set out what is to be done with any material that the recipient does not utilize. This section is unilateral- the party transferring the material can request all unused material back at any time.

6. Reports and Publications. The results of the studies conducted by making use of the MATERIAL shall be reported to [] if requested by [].

- This section is also unilateral and appears to benefit the party transferring the material. The transferring party has full control of the results of the experiments involving the material and can request this information at any time.

7. No Warranty. RECIPIENT agrees that [] makes no warranties whatsoever regarding the quality of the MATERIAL transferred. RECIPIENT also agrees that [] makes no warranty that the MATERIAL transferred does not infringe patent or other intellectual property rights of others.

- This section is unilateral and provides great benefit to the transferring party. It protects the transferring party from all liability concerning any intellectual property rights that use of the material may be infringing. It also rids the transferring party of all obligations and responsibilities to ensure the quality of the material.

8. Disputes. In the event of litigation or arbitration between us arising from this Agreement, the prevailing party shall be entitled to recover court or arbitration costs and reasonable fees of attorneys and experts incurred by such party in connection with the action. The laws of the State of [] shall govern this Agreement. All actions arising therefrom shall be brought in the courts of the State of [] and the parties hereby submit to the venue and personal jurisdiction of such courts. The RECIPIENT understands that disclosure or improper use of the MATERIALS or associated information will result in irreparable harm for which there is no adequate remedy that can be compensated by a monetary damages award .

- This section contains a choice of law clause and a choice of venue clause. It establishes in what jurisdiction any litigation will take place and which state's law will govern. This section also makes clear that in the event of litigation or arbitration, the prevailing party will recover all costs and attorneys' fees.

Works Cited:

Phillip McGarrigle, *Materials Transfer Undertaking*, Biotechnology Law 2015, Santa Clara University

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